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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/988,783	11/20/2001	Jean Prevost	1912-0253P	9224

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EXAMINER

BOSS, WENDY L

ART UNIT	PAPER NUMBER
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1775

DATE MAILED: 03/13/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/988,783

Applicant(s)

PREVOST, JEAN

Examiner

Wendy Boss

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 December 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 08/947,881.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 28 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The examiner could not find support in the specification for the synthetic surface being a surface for agricultural crops.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 22 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. In claim 22, it is not clear what is meant by the formula $2A = 3/2T = L$. The examiner could not find support in the specification for such a relationship.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

formula determine pile height, infill thickness
once particular use is decided

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-6, 13, 14, 16, 21-25, 27 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by CA 2,095,158 (Prevost).

Prevost discloses a synthetic surface having a flexible backing member, parallel rows of synthetic ribbons, representing blades of grass, projecting upwardly from the backing member, the rows of ribbons spaced apart from each other from between 0.75 inch and 1.25 inches (see page 8, lines 18-23), which partially overlaps the range recited in the claims. The reference further discloses that the length of the ribbons may be up to 3 inches in length (see page 9, lines 1-4), which is at least twice the dimension of the spacing between the rows of ribbons. The surface in the reference also includes a relatively thick layer of particulate material on the backing member supporting the ribbons in a relatively upright position relative to the backing member (see page 7, lines 6-19). At page 7, lines 16-19, it is disclosed that the particulate layer has a thickness of at least half the length of the ribbons, which encompasses the claimed range of at least two-thirds. The length of the ribbons and the spacing between the rows in the reference also satisfies the relationship of $2A \leq L$, and fall within the range of $3A$ and $6A$. Prevost further discloses that the synthetic surface may be used as a surface for a sports playing field (see page 1, lines 2-4).

The reference does not specifically recite that the synthetic surface may be a surface for agricultural crops; however, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

prior art does not have any
relationship of width, length and
all 3 row spacing

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8. Claims 13, 14, 16, 17, 22, 23, 25, 27 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,637,942 (Tomarin).

Tomarin discloses a synthetic grass surface for a sports playing field wherein the synthetic grass surface comprises a flexible backing member, parallel rows of synthetic ribbons, representing blades of grass, projecting upwardly from the backing member, the rows of ribbons spaced apart from each other (see Figure 1; and column 2, lines 47-56). At column 1, lines 44-46, Tomarin discloses that the surface includes a relatively thick layer of particulate material on the backing member supporting the ribbons in a relatively upright position relative to the backing member. In Figure 1, it appears that the particulate layer has a thickness of substantially $\frac{2}{3}$ the length of the ribbons, and that the ribbons extend between $\frac{1}{4}$ inch and 1-1/2 inches above the layer of particulate material. The relationship of the length of the ribbons and spacing between the rows in the reference is also $2A \leq L$ (see column 2, lines 57-62; and column 3, lines 18-25). It is also disclosed by Tomarin that the backing member may be a single or double layer of permeable fabric (see column 2, lines 47-66; and column 4, lines 21-24). The length of the ribbons in the reference is also in a range between $3A$ and $6A$, as recited in claim 23. Tomarin further discloses that the synthetic surface may be a surface for a sports playing field (see column 1, lines 5-14), as recited in claim 27.

The reference does not specifically recite that the synthetic surface may be a surface for agricultural crops; however, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 18-20 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,637,942 (Tomarin) in view of U.S. Patent No. 5,794,861 (Rutherford, Sr.).

Tomarin discloses a synthetic surface as shown above in paragraph number 7. Tomarin also discloses that the particulate layer is sand. It is well known in the art that ground rubber provide a less abrasive infill for synthetic surfaces than sand. It would have been obvious to one having ordinary skill in the art to substitute all or part of the sand with ground rubber. Attention is directed to column 3, lines 59-63 of Rutherford, which teaches that it is well known to produce ground rubber by subjecting vehicle tires to cryogenic fluids when they are recycled. It is within the level of one having ordinary skill in the art to use any type of ground rubber in the Tomarin turf.

Tomarin also does not disclose that the backing member is needle punched; however, patentability of an article depends on the article itself and not the method used to produce it (see MPEP 2113). It is also not disclosed that the backing member is a triple layer of permeable fabric; however, it would have been obvious to one having ordinary skill in the art that adding additional layers of fabric would improve the structural integrity of the turf.

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11. Claims 7-12, 15, 17-20 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over CA 2,095,158 (Prevost) in view of U.S. Patent No. 5,794,861 (Rutherford, Sr.) and CA 1,182,484 (Haas, Jr.).

Prevost discloses a synthetic surface as shown above in paragraph number 7. Prevost also discloses that the particulate layer may be a mixture of sand and ground rubber as provided for in CA 1,182,484(see page 7, lines 15-21). Attention is directed to page 11, lines 3-7 of CA 1,182,484, which teaches that the particulate may range from 4 to 70 mesh, which encompasses the range recited in claim 10.

Prevost does not specifically disclose that the rubber of the particulate material is cryogenically ground rubber. At page 10, line 32 through page 11, line 2, CA 1,182,484 teaches that the rubber may be rubber produced from scrap vehicle tires. Attention is directed to column 3, lines 59-63 of Rutherford, which teaches that it is well known to subject vehicle tires to cryogenic fluids when they are recycled to form rubber particulate. It is therefore within the level of one having ordinary skill in the art to use rubber particulate obtained by a cryogenic grinding process in the reference turf.

Prevost also does not disclose that the backing member is needle punched; however, patentability of an article depends on the article itself and not the method used to produce it (see MPEP 2113). It is also not disclosed whether the backing member is a double layer, or a triple layer of permeable fabric; however, it would have been obvious to one having ordinary skill in the art that using multiple layers of fabric would improve the structural integrity of the turf.


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Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wendy Boss whose telephone number is 703-306-5922. The examiner can normally be reached on M-Th 8:30a-6:00p; 2nd F 8:30a-5:00p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Deborah Jones can be reached on 703-308-3822.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


Wendy Boss
March 6, 2003


DEBORAH JONES
SUPERVISORY PATENT EXAMINER